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RIGHTS OF THE CHILD

Report of the working group on a draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography on its fifth session

Chairman-Rapporteur: Mr. Iván Mora Godoy (Cuba)

CONTENTS

	Paragraphs	Page
Introduction	1 - 2	3
I. ORGANIZATION OF THE SESSION	3 - 16	3
A. Opening and duration of the session	3	3
B. Election of the Chairman-Rapporteur	4	3
C. Organization of work	5 - 9	3
D. Participation	10 - 15	4
E. Documentation	16	5
II. DISCUSSION ON THE DRAFT OPTIONAL PROTOCOL	17 - 93	5
A. Annex I: Definitions; penalization and protection of children	18 - 76	5
1. Chapter I: Definitions	24 - 60	7
2. Chapter II: Penalization and protection of children	61 - 76	13

CONTENTS (continued)

		Paragraphs	Page
B.	Annex II: Draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	77 - 93	15
	1. Part 1: Texts resulting from the debates of the working group at its fifth session	77 - 91	15
	2. Part 2: Texts left from previous sessions for consideration by the working group at its next session	92 - 93	18
III.	EXCHANGE OF VIEWS WITH THE SPECIAL RAPPORTEUR AND MEMBERS OF THE COMMITTEE ON THE RIGHTS OF THE CHILD	94 - 101	18
IV.	DISCUSSION ON THE WORKING METHODS OF THE WORKING GROUP	102 - 107	19

Annexes

I.	Definitions; penalization and protection of children	22
II.	Draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	24
	Part 1: Texts resulting from the debates held by the working group at its fifth session	24
	Part 2: Texts left from previous sessions for consideration by the working group at its next session	26

Introduction

1. The Commission on Human Rights, in paragraph 9 (b) of its resolution 1998/76, requested its open-ended inter-sessional working group on a draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography to meet for a period of two weeks prior to the fifty-fifth session of the Commission and to redouble its efforts with the aim of finalizing the draft optional protocol by the tenth anniversary of the Convention on the Rights of the Child.

2. The Economic and Social Council, in its decision 1998/271, authorized the working group to meet for a period of two weeks prior to the fifty-fifth session of the Commission.

I. ORGANIZATION OF THE SESSION

A. Opening and duration of the session

3. The working group met from 25 January to 5 February 1999 and held eight plenary meetings, on 25 and 27 January; 1, 3 and 5 February and 24 March 1999. The session was opened by the Deputy High Commissioner for Human Rights, who made a statement in which he recalled that defence of the rights of the child should be the battle-cry across the globe and that practices subsumed under the headings of the sale of children, child prostitution and child pornography needed to be outlawed. In that regard, he made a plea to the working group to finish urgently the drafting of the protocol.

B. Election of the Chairman-Rapporteur

4. At its first meeting, on 25 January 1999, the working group re-elected Mr. Iván Mora Godoy (Cuba) Chairman-Rapporteur. At its 8th meeting, on 24 March 1999, Mrs. Laura Dupuy (Uruguay) was designated to replace the Chairman for the purpose of the adoption of the report.

C. Organization of work

5. At the first meeting, the Chairman-Rapporteur recalled that participants had already expressed opinions on the draft optional protocol at previous sessions of the working group. The reports on the first to third sessions (E/CN.4/1995/95, E/CN.4/1996/101 and E/CN.4/1997/97) reflected those views. In accordance with practice adopted at the fourth session, his intention was to avoid a general debate and to encourage the working group to concentrate on drafting issues, in order to save time and to be able to comply with the Commission's request that the drafting of the protocol be concluded before the tenth anniversary of the Convention on the Rights of the Child.

6. The Chairman-Rapporteur referred to a suggestion made by the delegation of Canada, at the fourth session that the working group should adopt a work programme at the beginning of its session which would allow enough time for the consideration of the various chapters. In that regard, he submitted a programme of work for the two-week session. It was, however, agreed that that programme should not preclude the usual flexibility in the work of the working group.

7. After discussion among the participants, it was agreed that the first week would be devoted to the consideration of the paragraphs of chapter IV, Penalization and protection of [children] [child victims] which could not be considered at the fourth session, and of the chapter on definitions. The other chapters and the preamble would be considered during the second week of the session. It was also agreed that the text of the protocol would be re-ordered in a more logical manner. Following the preamble, the chapter on definitions would become chapter I, the chapter on penalization and protection of [children] [child victims] would be chapter II and the chapter on prevention, assistance and compensation would be chapter III. The chapter on international cooperation and coordination would become chapter IV, unless decided otherwise by the working group as suggested by the delegation of Australia, which had proposed that that section should be included in the preamble to the protocol. Chapter V would include the general provisions and other matters to be considered by the working group. After considering the various chapters before them, the participants agreed to devote some time to harmonizing the provisions of the various chapters.

8. As in previous years, the Chairman proposed that the work should be conducted in an informal drafting group and that some plenary meetings should be held to allow participants to express their opinions on the texts discussed during the meetings of the informal drafting group.

9. The Chairman welcomed the Special Rapporteur on the sale of children, child prostitution and child pornography, whose presence during the first week of the session would be essential.

D. Participation

10. The representatives of the following States members of the Commission attended the meetings of the working group, which were open to all members of the Commission: Argentina, Austria, Canada, Chile, China, Colombia, Cuba, Czech Republic, Ecuador, El Salvador, France, Germany, Guatemala, India, Indonesia, Ireland, Italy, Japan, Latvia, Luxembourg, Mexico, Morocco, Norway, Peru, Philippines, Poland, Republic of Korea, Romania, Russian Federation, South Africa, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela.

11. The following States non-members of the Commission were represented by observers: Algeria, Angola, Australia, Belgium, Brazil, Costa Rica, Croatia, Denmark, Dominican Republic, Egypt, Estonia, Finland, Iran (Islamic Republic of), Lithuania, Malaysia, Netherlands, New Zealand, Paraguay, Portugal, Slovakia, Spain, Sweden, Syrian Arab Republic, Turkey, Ukraine.

12. The following non-member States of the United Nations were also represented by observers: Holy See and Switzerland.

13. The following United Nations bodies were represented by an observers: United Nations Children's Fund, Office of the United Nations High Commissioner for Refugees.

14. The following specialized agency was represented by an observer: International Labour Organization.

15. The following non-governmental organizations in consultative status with the Economic and Social Council were represented by observers: International Alliance of Women - Equal Rights, Equal Responsibilities, International Council of Women, Coalition against Trafficking in Women, Defence for Children International, International Federation of University Women, International Federation of Women Lawyers.

E. Documentation

16. The working group had before it the following documents:

E/CN.4/1998/WG.14/1	Provisional agenda
E/CN.4/1998/WG.14/2 and Add.1	Comments on the report of the working group: Note by the Secretary-General
E/CN.4/1998/103	Report of the working group on its fourth session
E/CN.4/1998/101	Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Mrs. Ofelia Calcetas-Santos
A/51/385	Letter dated 19 September 1996 from the Permanent Representative of Sweden to the United Nations addressed to the Secretary-General transmitting the Declaration and Agenda for Action adopted by the Congress against Commercial Sexual Exploitation of Children, held in Stockholm from 27 to 31 August 1996.

II. DISCUSSION ON THE DRAFT OPTIONAL PROTOCOL

17. In accordance with the proposal made by the Chairman-Rapporteur at the first plenary meeting, and after having met in an informal drafting group, the working group held a general debate in plenary meetings to enable delegations to present their views on specific provisions of the draft protocol discussed in the drafting group. The present chapter reflects the opinions expressed by delegations.

A. Annex I: Definitions: penalization and protection of children

18. During the informal drafting group meetings, informal consultations were held on the definitions of the sale of children, of child prostitution and of child pornography, coordinated respectively by the delegations of Mexico, Australia and Uruguay. It was decided that the definitions should be considered together with the section on penalization. The texts which could be used as a basis for further discussion are included in annex I to the present report. Annex I was discussed in plenary meetings.

19. With regard to the status of annex I, the representative of the United Kingdom of Great Britain and Northern Ireland, supported by the representative of Japan, said that the understanding of his delegation was that part of that text represented the results of detailed negotiation at the current session around which a consensus, or at least something close to a consensus, could be said to exist. However, other parts of the text were not the subject of consensus, either because discussions on those parts were inconclusive or because they represented proposals which had been the subject of little or no discussion during the session. His opinion was shared by the observer for Denmark, who was not of the view that a new consensus existed on annex I.

20. The observer for the Syrian Arab Republic regretted that annex I did not properly reflect the views of her delegation and she proposed inserting in the chapeau of annex I, after the word "amendments", the phrase "and to any new elements". The observers for Egypt, the Islamic Republic of Iran and the Syrian Arab Republic requested that the texts of definitions they had proposed with the delegations of Cuba and China on the sale of children, child prostitution and child pornography be included in the present report. The texts read as follows:

"Sale of children

"Sale of children means any kind of transaction of which a child, or part of the body of a child, is an object, whether the control over the child in question has been transferred by a person enjoying parental authority over the child or just physical, legal or illegal custody for any form of compensation or benefit, and for whatever purpose, including in particular, sexual exploitation, illegal adoption, forced labour, economic exploitation, slavery or slavery-like situations, medical experiments or transfer of organs.

"Child pornography

"Child pornography means the conception, production, presentation, dissemination, whether or not on commercial basis, visual or audio, that constitute a real or simulated representation of a child engaged or depicted as engaged in sexual activity or any representation of the body or part of the body of a child for promoting or satisfying sexual purposes.

"Child prostitution

"Child prostitution means the act of obtaining, engaging, or facilitating by any person, through incitement, temptation, misleading, or coercion, of any form of sexual activities of a child compensated by any form of consideration or benefit for the sexual gratification of that person or any other person, whether on individual or collective basis, including in the context of child sex tourism."

21. The observer for New Zealand considered it very important that the optional protocol should be clear on exactly what States Parties would be required to criminalize. She preferred to specify activities that constituted

an offence to be penalized for example, facilitating, coercing, inducing, under chapter II, rather than their being part of the three different definitions under chapter I. She therefore supported the structure of the draft text, although she considered that further progress could be made in specifying activities to be penalized, in a standardized way for all three definitions. In that regard, she noted the duplication of subparagraphs 1 (a) and 1 (b) of chapter II.

22. The observers for Brazil, Egypt and Turkey would have preferred that the texts in annex I be included in the report and not in an annex. The observer for the Syrian Arab Republic said that, since an amendment she had made had not been included in annex I, her delegation had a strong preference for including annex I in the report, but not as an annex.

23. The representatives of France and Germany and the observers for Australia, Belgium and New Zealand, on the other hand, were in favour of including the texts of annex I as an annex to the report because the texts in annex I reflected the progress made during the session and would serve as a basis for further discussions. That view was supported by the representatives of Ecuador, Peru and the United States of America and the observer for Finland.

1. Chapter I: Definitions

24. The observer for Portugal said that the provisions to be incorporated in the optional protocol should strengthen or complement the provisions of the Convention on the Rights of the Child.

25. The representative of the Russian Federation, supported by the representatives of Argentina and Colombia and the observer for the International Federation of Women Lawyers, recalled the proposal his delegation had submitted the previous year, namely that the working group had to reflect on the need to change the title of the optional protocol to "additional protocol". Although that change would not modify the legal status of the protocol, it would clearly reaffirm that the provisions of articles 34 and 35 of the Convention on the Rights of the Child, on which the working group had been basing its work were imperative and in no way optional. His delegation would bring the issue to the attention of the Commission on Human Rights at its forthcoming session for consideration, as only the Commission could take a decision on it. There was wide support for further consideration of this issue.

26. The representative of the Netherlands, supported by the observer for Denmark, said that although, some progress had been made on the chapter on definitions at the current session, there still remained wide divergence on many issues. Not only did earlier problems remain, but some new ones had arisen. In those circumstances, his delegation could only reiterate its earlier position that the definitions would be better left to national law. A number of "elements" could be included in a broad paragraph. The offences could then be described in greater detail in the chapter on penalization.

27. The representative of Uruguay stated the need to continue to work towards the harmonization of the chapter on definitions and the chapter on penalization.

28. The representative of Colombia proposed inserting at the end of the chapter on definitions a paragraph which would read: "It is understood that this article (or chapter) is without prejudice to any international instrument which contains or may contain provisions broader in scope".

Sale of children

29. The representative of Mexico, supported by the Latin American delegations, in particular the representatives of Argentina and Colombia, recalled that she had already pointed out at the previous session the urgent need to focus on the mandate of the working group; its work should be guided by the principle of the best interests of the child. In that context, she proposed the following definition: "Sale of children means any act or transfer in which a child is considered an object and transferred illicitly by one person to another, regardless of the form it takes and the terms agreed upon".

30. The representative of Mexico, as a result of the informal consultations on the definition of the sale of children she had coordinated, also submitted for consideration by the delegations, and as a basis for future work, the following definition she had already submitted at the previous session of the working group:

> "Sale of children means any kind of transaction where the child is the object, regardless of the form it takes and whether any compensation is involved, for [the purpose of sexual exploitation] [whatever purpose]."

31. The representative of Venezuela said that the legal framework of the protocol was not only article 34 but all the Convention's articles, especially articles 21, 32, 33, 34 and 38, and in particular article 35.

32. The observer for the Syrian Arab Republic, supported by the representative of South Africa and the observer for the Islamic Republic of Iran was in favour of keeping the phrase "any part of the body of the child" in the text of the definition without square brackets. That phrase would cover the important issue of traffic in organs. She also proposed the deletion of the phrase "with a view to the sexual exploitation of the child" and the deletion of the brackets around the phrase "for any purpose or any form" as that was the language of the Convention on the Rights of the Child.

33. The representative of Colombia expressed his delegation's dislike of the word "sale" when referring to human beings, in particular children. The use of the words "illicitly transferred" was not appropriate as it would imply that there can be licit transfers of children, which is ethically and juridically inadmissible. He was supported, in that regard, by the observer for Paraguay. His delegation was of the view that trafficking in or the sale of organs should be regarded as an aggravating circumstance in punishing the sale of children, or, owing to its specificity and serious nature, classified as a separate offence, so that, in the event that the inappropriately termed

"sale" of a child occurred together with the extraction of organs for commercial purposes, the resulting concurrence of offences would automatically carry a proportionally more severe penalty.

34. The representative of France expressed a preference not to include the issue of organ transplant referred to in the phrase "or any part of the body of the child". That issue was serious enough to deserve special treatment, but not in the context of the protocol.

35. With regard to the relationship between chapter I (Definitions) and chapter II (Penalization), the representative of Canada, supported by the observers for Belgium and Switzerland, expressed support for the efforts of the observers for Australia to create a structure separating the definitions from the various prohibited activities, but stressed the importance of ensuring that the relationship between the definitions and penalization chapters was symmetrical for all three definitions.

36. Regarding the definition of sale of children, the representative of Canada expressed the importance of a clear definition, capable of implementation. In that regard, the word "illicitly" was an uncertain term with no widely understood meaning. Use of that word could easily result in different interpretations or standards by States. The formulation referring to sale of children "for any purpose and in any form" was too broad to be capable of implementation. That opinion was shared by the representative of Austria and the observers for Australia and Belgium. However, the representative of Canada remained open to exploring other possibilities for defining sale of children.

37. The observer for Egypt, supported by the representatives of China, Cuba, Ecuador and Venezuela and the observers for Turkey, the Islamic Republic of Iran and the Syrian Arab Republic, stated that the sale of organs was within the mandate of the working group and the scope of the protocol, which had to be as wide as possible. He recalled that the Commission on Human Rights had given a broad mandate to the working group and that only the Commission could narrow it. Sale should be condemned for whatever purpose and for whatever part of the body of the child. He also considered that the definition should also refer to any form of "consideration" along with the reference to remuneration. His opinion in that regard was shared by the representatives of Ecuador, Chile and Uruguay and the observers for Belgium, New Zealand, Paraguay, Portugal, Switzerland and Turkey.

38. The representative of Peru emphasized that the mandate received by the Commission on Human Rights did not associate the sale of children with any specific purpose. He also noted that, pursuant to article 35 of the Convention on the Rights of the Child, States parties were under an obligation to prevent the sale of children for any purpose whatsoever. His opinion was shared by the representatives of Argentina, Chile, Colombia, Cuba, El Salvador, France, Uruguay and Venezuela and the observers for Brazil, the Dominican Republic, the Islamic Republic of Iran, Paraguay and Turkey.

39. The observer for Egypt insisted on the necessity of coherence of approach between the working group and other mechanisms and between the Commission on Human Rights and other bodies. He therefore requested the

working group to examine World Health Assembly resolutions WHA 42.5 of May 1989, WHA 44.25 of May 1991 and WHA 40.13 of May 1987 (on the development of guiding principles for human organ transplants).

40. The observer for Switzerland proposed as a compromise that the definition refer to sale with a view to the exploitation of the child. That formula would have the advantage of taking into account the concerns of countries that would like to expand the scope of the protocol, as well as countries that would prefer a limited scope. In order to achieve a consensus and in view of the stage reached by the working group in its work, the observer for Belgium supported the Swiss proposal.

41. The observer for Portugal stated that even though her delegation would have no problem with having a wider scope to the protocol, it would also accept, for an easier consensus, that the scope be limited and refer to sale for sexual exploitation. She recalled that the Special Rapporteur on the sale of children, child prostitution and child pornography would prefer a limited protocol rather than no protocol at all. In that regard, her opinion was shared by the representative of Japan, who was in favour of the definition of sale for sexual exploitation. The observer for New Zealand also noted the comments made by the Special Rapporteur, but was prepared to consider the compromise proposal made by Switzerland.

42. The representative of France encouraged the working group to sustain the positive momentum that had developed at the current session. His delegation was in favour of consensual initiatives. However, he urged delegations to limit the scope of the protocol to the sale of children for sexual exploitation, in order to make it possible to adopt, as soon as possible, a protocol which could be easily implemented. His opinion was shared by the representatives of Germany and the United States of America and the observer for the Netherlands. He also expressed the reservation of his delegation concerning the word "transferred"; he would prefer the word "delivery" to be used. He was supported by the representative of Ecuador and the observers for Belgium and Paraguay. He noted that the French translation needed further consideration and was supported in that respect by the observer for Belgium.

43. The representative of Chile expressed his support for the inclusion of the word "transaction" in the definitions.

44. The representatives of Peru and the Republic of Korea were satisfied with the structure of annex I, which helped the consideration together of the definitions and the practices to be penalized and clarified the issue. On the other hand, the representative of Colombia preferred that the definitions and the penalization should be dealt with in two separate chapters.

Child prostitution

45. The representative of Colombia drew the attention of participants to an issue raised by the representative of Peru regarding the fact that in defining child prostitution and penalizing it, they were in fact penalizing pimping and defining the involvement of children in prostitution. He suggested the deletion of the word "offering", because the word "procuring" was wide enough and encompassed the notion of offer.

46. The representative of Cuba expressed the need to maintain the consensus on the definition of child prostitution which was, according to her delegation, the most consensual. She was supported by the representatives of Colombia, Ecuador and France and the observers for Belgium, the Dominican Republic and Switzerland. She suggested that delegations not reopen the debate on that text. She also proposed, for the sake of clarity and consistency with the chapter on penalization that, in accordance with the Spanish text, reference be made to the use of children in prostitution, rather than child prostitution. Her opinion in that regard was shared by the representative of Colombia.

47. The observer for Finland agreed that there was a need to maintain the result of detailed negotiations on the definition of child prostitution which was, according to his delegation, the best basis for consensus.

48. The observer for the Syrian Arab Republic proposed inserting the word "inducing" after the word "procuring", and to keep the word "activities" since it was the wording of the Convention on the Rights of the Child.

49. The observer for Australia, supported by the representatives of Canada, Germany, Peru, the Republic of Korea, the United Kingdom, the United States of America, Uruguay and Venezuela and the observers for New Zealand and Paraguay, considered that, in keeping with the structure of other definitions and in the interest of avoiding repetition, the words "offering, obtaining and procuring" were more appropriately placed in the penalization chapter only.

50. The representative of Japan expressed his concern about the word "offering", which might lead to sanctioning a child who offered him/herself, and proposed deleting the words "the use of", which were unclear. As the words "sexual activities" were imprecise, he would favour the insertion of the word "unlawful" before the words "sexual activities". He was supported by the representative of the Republic of Korea. The observers for New Zealand and Portugal stated that their delegations reserved their position about the inclusion or not of "unlawful".

51. The observers for the Syrian Arab Republic and Turkey expressed preference for retaining the word "unlawful" in the definition as some legal systems allowed the marriage of children under the age of 18 in special cases, with parental agreement and judicial approval. Those marriages could not be considered as unlawful.

52. The representative of the United Kingdom of Great Britain and Northern Ireland, supported by the representative of the United States of America, noted that it was his delegation's understanding that no consensus had been reached on the use of the word "activities".

Child pornography

53. The observer for the Syrian Arab Republic proposed deleting the word "actual" and keeping the words "real or simulated" without square brackets. She also proposed referring to visual and audio pornography, in accordance

with the definition of the Special Rapporteur on the sale of children, child prostitution and child pornography. She was also in favour of keeping the last sentence without square brackets.

54. On the other hand, the observer for the Netherlands, supported by the representative of the United States of America, stated that the term "or simulated" could widen the scope of the article to the concept of obscenity. It should be borne in mind that the object of the present protocol was the protection of the rights of the child. Accordingly he doubted whether simulations of acts involving children should be covered in the present protocol at all times.

55. The representative of France proposed deleting the word "actual" and keeping the words "real or simulated" without square brackets. His opinion was shared by the representatives of Canada, Cuba, Chile, the Republic of Korea and Venezuela and the observers for Australia, Belgium, New Zealand, Paraguay and Portugal. The observer for Switzerland shared the view of the representative of France with respect to removing the square brackets around the words "real or simulated". The representative of France also proposed removing the square brackets around the last sentence. He was supported by the representatives of Canada, Cuba, Chile, China, Ecuador, Japan, the Republic of Korea and Venezuela and the observers for Belgium, Portugal and New Zealand. With regard to the last sentence in the French version of the text, he suggested retaining the phrase used in the report of the previous session. The observer for Belgium agreed.

56. The representative of Japan proposed keeping the word "actual" without square brackets and limiting the definition to visual pornography.

57. The representative of China stated that cultural diversity could not be used to justify a narrow definition of child pornography. The definition should be as broad as possible and aim at protecting children.

58. The representative of Ecuador, together with the representative of Chile and the observers for Belgium, Iran and Switzerland, recalled the importance of including a reference to child sexual tourism in the definitions-penalization section and/or in the preamble. In that regard, the representative of Canada recalled the agreement at the previous session to include a reference to the concept of child sex tourism.

59. The observer for Brazil, supported by the representatives of Argentina, China, Cuba, El Salvador, Peru and Venezuela and the observers for Paraguay and the Dominican Republic, stated that his delegation considered it crucial that the question of child sex tourism be included in the future protocol. He could accept the formula of retaining the two elements (domestically and/or internationally; organized and/or on an individual basis) to address the subject. However, it was his delegation's understanding that the question of child sex tourism would be adequately addressed in the penalization chapter and also in the preamble. His delegation reserved its position with respect to coming back in the future to the original proposal to have a specific definition of child sex tourism, as mentioned in paragraphs 53 and 54 of document E/CN.4/1998/103. The observer of Brazil attached great importance to the understanding of paragraphs 53 and 54, mentioned above.

60. The observer for Australia considered that important progress had been made during the current session, with broad agreement on treating the concept of child sex tourism in the penalization and prosecution chapter, and based on earlier agreement, in the preamble to the protocol. The observer for Australia welcomed the flexibility shown by delegations in agreeing to avoid further repetition of the concept and therefore to delete reference to child sex tourism from the definition.

2. Chapter II: Penalization and protection of children

61. The working group decided that the title of this chapter should refer to the penalization and protection of children, deleting the words "child victims" which had been placed in square brackets. It was the understanding of the working group that protection should be given to all children and not only to victims. The working group examined the sections of chapter II on penalization and protection of children which had not been considered at its previous session. These sections were debated in the informal drafting group and could be accepted by the working group.

62. As agreed in the informal drafting groups, the definitions were considered together with the section on penalization and prosecution.

63. With regard to the chapeau of paragraph 1, the observer for Belgium expressed the wish that the words "intentionally committed" be included.

64. With regard to paragraph 1 and its subparagraphs, the representative of France, supported by the observers for Belgium and the Netherlands, proposed deleting from subparagraph 1 (a), deleting the phrase "or any part of the body of a child". He also proposed replacing in subparagraph 1 (c) the word "possession" by "detention". With regard to paragraph 1 (c), his opinion was shared by the observer for Belgium. He also proposed replacing the word "distributing" by "disseminating".

65. The observer for Australia proposed deleting from subparagraph 1 (b) the words "including through coercion or inducement"; as the same concept was covered by the expression "by whatever means". The observer for New Zealand also proposed deleting the same words, considering that the expression "intentionally facilitating" covered this concept. The representative of the United States of America agreed with these views. The representative of Canada expressed concern regarding the inclusion of the word "intentionally" and said that reference to facilitating was not required as it was covered by the references to procuring and participation in paragraph 2. The observer for New Zealand supported the removal from paragraph 1 (c) of both sets of square brackets. This last opinion was shared by the representative of Canada.

66. The observer for Australia considered that the formulations in paragraph 1 and its subparagraphs required further work, even though the approach used had considerable support, and that they would also need further harmonization with paragraphs 1 bis and 2 in the penalization chapter (see annex II, part two of the present report). In paragraph 1 (a), she proposed retaining the square brackets around the words "or any part of the body of a child", pending further consideration of the definitions and the issue of

scope. In paragraph 1 (c), she proposed deleting the square brackets around the words "or possessing" and also deleting the words "or possessing for the purpose of distribution". This last opinion was shared by the observers for Belgium and Switzerland. The representatives of France and Japan, on the other hand, preferred limiting possession to "for the purpose of distribution". The representative of Japan also preferred to limit the production in an appropriate manner. The representative of France and the observer for Belgium preferred the use of the wording "détention" rather than "possession" in the French text.

67. The representative of Canada expressed her concern about the lack of clarity of the word "facilitation" in paragraph 1 (a) and about the word "intentionally" in paragraph 1 (b). Those concepts would need further consideration. She was supported by the representatives of the United Kingdom of Great Britain and Northern Ireland and the United States of America.

68. The representative of South Africa proposed inserting in paragraph 1 (b) the word "attempting" between "obtaining" and "procuring".

69. The observer for Australia considered that the intentional facilitation of all offences should be penalized, not just the intentional facilitation of child prostitution offences, and proposed that the words "intentionally facilitating" would be better placed in paragraph 2 of the chapter so that they would apply to all offences. In a similar vein, the representative of Japan proposed that, in accordance with the wording of subparagraphs 1 (a) and (b) providing for the penalization of the facilitation of the acts referred to in those paragraphs, the same should apply to the facilitation of the acts referred to in paragraph 1 (c).

70. The representative of Ecuador proposed adding at the end of paragraph 2, the words "prosecuted and punished in accordance with due process and appropriate law" in square brackets.

71. With regard to paragraph 3, the representative of Venezuela was in favour of removing the square brackets from around the words "and sanctioning". This position was shared by the representative of Chile and the observer for Australia.

72. The observer for Switzerland, supported by the observer for Finland, proposed deleting the word "effectively" in paragraph 3, since it weakened the word "prohibiting" as used in other provisions of the protocol.

73. Upon a proposal from the observer for Egypt, the Chairman stated that the working group's understanding of the term "production" in paragraph 3 of the section on penalization and prosecution included the concept of creation, conception and all steps of production. The observer for Egypt wondered whether the word "sanctioning" in the same paragraph would refer to penalization or not.

74. The representative of Argentina recalled that the issue of "sanctioning" in paragraph 3 of the section on penalization and prosecution remained pending and would need further consideration.

75. The representative of Ecuador proposed inserting in square brackets, the word "prosecuting" after the word "prohibiting", and replacing the word "practices" by "offences", in order to be consistent with the wording of paragraphs 1 and 2.

76. The observer for Brazil, supported by the representative of El Salvador and the observer for the Dominican Republic, said that his delegation accepted the texts of chapter II on the understanding that clear mention of the issue of child sex tourism should be included in that chapter, as well as in chapter I on the definitions.

B. Annex II: Draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

1. Part 1: Texts resulting from the debates of the working group at its fifth session

Extradition

77. The observer for Australia supported the inclusion of the text as currently drafted. With regard to paragraph 5, left for consideration at the next session of the working group, the representative of Argentina, supported by the representative of Peru, recalled that no decision had been taken regarding the proposal made by his delegation to use in chapter II, in the extradition section, the provisions of article 5, paragraph 2, of the Convention against Torture. The representatives of China and Cuba and the observers for Australia, Belgium and the Netherlands were of the view that paragraph 5 would require further work. The representative of the United Kingdom of Great Britain and Northern Ireland supported the "prosecute and extradite" principle contained in paragraph 5 and, although in favour of a reference to the double criminality rule, preferred to include such a reference in paragraph 2 of chapter II. The representative of Canada proposed deleting paragraph 5.

78. The observer for the Netherlands also attached importance to retaining the notion of the dual criminality rule. He was open to suggestions finding alternative language to paragraph 5, but could not agree to the deletion of the concept.

79. The observer for New Zealand said that her delegation would not insist on the inclusion of paragraph 5, even though it could be a positive additional element to the protocol, as not all extradition treaties contained such a provision and not all countries required extradition treaties. In that connection, she expressed support for the use of article 5, paragraph 2 of the Convention against Torture, as proposed by the representative of Argentina. The latter proposal was also supported by the representative of Peru and the observers for Australia and Switzerland. In the same vein, the issue of universal jurisdiction as a means to enforce the standards contained in the present optional protocol was raised by the representative of Peru and the observer for Switzerland.

Mutual legal assistance

80. The observer for Australia supported the inclusion of the text as drafted.

Seizure and confiscation

81. The observer for Australia supported the inclusion of the text as drafted in paragraph 6, proposed by the delegation of Belgium. The representative of Ecuador proposed inserting the words "products obtained from the offences" within square brackets.

82. The observer for the Netherlands said that unfortunately it had not been possible to include the notion of the link between the confiscated materials and the offender. His delegation, supported by the representatives of the United Kingdom of Great Britain and Northern Ireland and the United States of America, felt, however, that the term "due process" did cover the protection of innocent third parties.

83. With regard to new paragraph 7, currently in square brackets, resulting from the discussions on the preceding paragraph, the representative of Ecuador proposed retaining the text within brackets. The representatives of Chile, China and Cuba and the observers for Brazil, the Islamic Republic of Iran and the Syrian Arab Republic preferred to retain paragraph 7 without brackets. The representatives of Canada, Germany and the United States of America preferred the deletion of paragraph 7 from the text. The observer for New Zealand expressed doubts as to whether paragraph 7 should be retained, but if it were the case, the formulation which included the words "where appropriate" before the words "aimed at closing on a temporary or definitive basis" should be maintained. The observer for Australia, while noting an emerging consensus against the inclusion of paragraph 7, said that her delegation was ready to accept retention of that paragraph, including the words "where appropriate".

84. The observer for Egypt, on behalf of the representatives of China, Cuba and Venezuela and the observers for Iran, the Syrian Arab Republic and Turkey, expressed the view that, in paragraph 6 (a) of the section on seizure and confiscation, they would prefer to have the words "or intended to be used" inserted between square brackets because of the very important dissuasive effect of that provision on convicted persons, as well as on potential criminals. Nevertheless, they only accepted the removal of that reference in the light of paragraph 7, which was in square brackets, and which could provide the same element of dissuasion, which was absolutely necessary to eradicate the practices prohibited by the draft protocol.

85. The understanding of the above-mentioned delegations, supported by the observer for Brazil, was that paragraph 6 (a) would remain without additional brackets. They had accepted the removal of the words "intended to be used" from paragraph 6 (a) as circulated in informal drafting groups with considerable regret since they covered materials of convicted persons which might not have been used, but were clearly meant to be used. Their agreement to dropping those words for the sake of consensus was dependent on the outcome of future negotiations on paragraph 7.

Protection of children

86. The representative of Ecuador proposed removing all the brackets from this section. The observer for Australia was of the view that it was necessary to protect the privacy and identity of child victims. Therefore, her delegation proposed deletion of the words "[when necessary]" from subparagraph 2 (e) and removal of the square brackets from around the rest of the subparagraph. She would also prefer the words "in accordance with national law" to be deleted, the term "avoid" to be replaced with "prohibit" and the word "inappropriate" to be inserted before "dissemination". That would distinguish between legitimate dissemination of information about the identity of a child, for example, to child welfare authorities or the police, and the inappropriate dissemination of information, for example to the media. The representative of Canada said that her delegation was flexible regarding the form such a qualification could take and would be willing to consider the formulation proposed by Australia.

87. The representative of Venezuela said that the protection of child victims should be viewed as deriving from article 36 of the Convention, and therefore proposed the deletion of the square brackets at the end of article 2 (e) in order to protect the privacy and identity of such children.

88. The observer for New Zealand considered, like the representative of Canada and the observer for Australia, that in accordance with the best interests of the child, there were situations in which it was appropriate to disclose information on a child victim to child welfare authorities and the police. The observer for New Zealand, supported by the representative of the United States of America considered that further work on the text was needed to provide for such disclosure and welcomed the Australian proposal in that regard, as did the observer for the Netherlands.

89. The representatives of China and France and the observers for the Islamic Republic of Iran, New Zealand and Switzerland proposed deleting the words "[when necessary]" in subparagraph 2 (e). With respect to the second bracketed phrase, the representatives of China, Ecuador, France and Norway, and the observers for Brazil, the Islamic Republic of Iran and the Syrian Arab Republic proposed keeping it and removing the square brackets. In opposition to this, the representative of the United Kingdom of Great Britain and Northern Ireland, supported by the representative of Germany and the observer for Belgium, proposed the deletion of the second bracketed phrase.

90. With regard to subparagraph 2 (e), the representative of Norway preferred that the text should be limited to the sentence that was not bracketed. She considered that the words "when necessary" would weaken the text and was therefore in favour of deleting them. Her delegation could, however, accept the wording in the second pair of square brackets concerning the non-dissemination of information on identity, but only provided that the reference to national legislation was deleted.

91. With regard to the wording of paragraph 6 under the subsection on protection of children, the observer for Australia was of the view that it could be improved in order to remove ambiguities, and proposed the following wording: "States Parties shall adopt measures in order to protect the safety

and integrity of those persons and/or institutions involved in the protection and rehabilitation of child victims and in the prevention of the practices prohibited under the present protocol". With regard to that paragraph, the Chairman recalled the proposal submitted by the observer for Belgium, which referred to the importance of the role of the persons and/or institutions involved in the prevention, protection and rehabilitation of child victims of sale, prostitution and pornography. That proposal would be included in the preamble to the protocol. In the view of the observer for Belgium, the role of the institutions referred to in paragraph 6 should be duly taken into account; he therefore proposed the following wording: "States parties undertake to give due consideration to the role played in combating the practices condemned by this protocol by individuals and/or institutions responsible for the prevention and/or protection and rehabilitation of child victims, and shall take the necessary measures to protect their safety and integrity."

2. Part 2: Texts left from previous sessions for consideration by the working group at its next session

92. With regard to the possible inclusion of the word "unlawful" when referring to sexual activities, the observer for Turkey did not consider it necessary to keep this word and proposed including in the preamble a new paragraph dealing with the question of traditional values (see annex II, part 2).

93. The observer for the Islamic Republic of Iran and the representative of Peru submitted several complementary clauses (see annex II, part 2, chap. V) for consideration at the next session of the working group. These clauses of a procedural nature, aimed at giving an overall picture of the draft protocol by establishing clauses on, inter alia, reporting mechanisms, reservations, entry into force, denunciation and other provisions.

III. EXCHANGE OF VIEWS WITH THE SPECIAL RAPPORTEUR AND MEMBERS OF THE COMMITTEE ON THE RIGHTS OF THE CHILD

94. On 27 January 1999, the working group had a plenary meeting to enable delegations to have an exchange of views with the Special Rapporteur on the sale of children, child prostitution and child pornography, Ms. Ofelia Calcetas-Santos, and members of the Committee on the Rights of the Child.

95. The Special Rapporteur said that the working group should not limit the scope of the optional protocol and stressed the need to have a clear definition of the sale of children, child prostitution and child pornography, respectively. She suggested that such definitions should then be used as the basis for punitive legislation for the protection of children. In that connection, the Special Rapporteur proposed the following definitions.

96. Sale of children meant: "the transfer of parental authority over and/or physical custody of the child from one person to another on a more or less permanent basis in exchange for financial or other reward or consideration".

97. Child prostitution meant: "the act of engaging or offering the services of a child to perform sexual acts for money or other consideration with that person or any other person".

98. With regard to child pornography, the Special Rapporteur felt the need to draw a distinction between visual child pornography and audio child pornography. The definition of visual child pornography was to read as follows: "Child pornography is the visual depiction of a child, real or simulated, engaged in explicit sexual activity, or the lewd exhibition of genitals, and involves the production, distribution and/or use of such material". Audio child pornography was defined as: "the use of audio devices using a child's voice, real or simulated, intended for the sexual gratification of the user, and involves the production, distribution and/or use of such material".

99. Addressing the working group, the Vice-Chairperson of the Committee on the Rights of the Child, Ms. Judith Karp, welcomed the unprecedented support given by the international community to the Convention on the Rights of the Child, which had virtually reached universal ratification. Since 1994, the Committee had followed with interest the deliberations of the working group and appreciated the valuable work which had been carried out to ensure effective promotion and protection of the rights of the child.

100. She reaffirmed the Committee's position that new provisions to be incorporated in an optional protocol should strengthen and complement the Convention on the Rights of the Child, and not merely reaffirm existing standards or even undermine them. She also reaffirmed the belief of the Committee that the holistic approach to the rights of the child enshrined in the Convention would require careful effort and closer cooperation among all the relevant actors in order to ensure the harmonization of outcomes. It was essential to avoid duplication and overlapping of initiatives, as well as the risk of inconsistency and incompatibility.

101. In the discussion which followed, a number of government delegations noted that for the moment there was a lacuna in the protection of children and they stressed the need in that respect for the international community to take stronger legal measures. It was also said that there was no duplication between the work of the working group and that of the Committee and that, in that regard, it was important to assess the situation in order to harmonize efforts to combat the trafficking of children.

IV. DISCUSSION ON THE WORKING METHODS OF THE WORKING GROUP

102. The representative of Canada, on behalf also of the representatives of Austria, Germany, Mexico, Norway, the United Kingdom of Great Britain and Northern Ireland and the United States of America and the observers for Australia, the Netherlands and New Zealand commented on the work and methods of the working group during the past year and in the year ahead. They noted with appreciation the efforts of the Chairman to introduce new approaches to the work, including the programme of work introduced on the first day of the session, and the use of "informal informals". Those innovations had played a large role in the progress made at the current session. They also thanked the Special Rapporteur for being present during the first week; her suggestions

had been very constructive, and her draft definitions had provided a useful springboard for discussion. They noted with interest the comments she had made which provided new incentive for compromise: she had urged delegations to compromise in order to reach agreement and had reminded participants that the optional protocol should strengthen the protection of children and that the existence of such an instrument would greatly assist her in her work.

103. They recognized that there remained a divergence of views with respect to the central issue of the scope of the protocol. However, they wished to emphasize that those views are not mutually exclusive, that they were in fact inclusive, each providing a significant measure of protection for children. Participants had had an excellent opportunity to achieve progress on the protection of children in a number of crucial areas; an opportunity to create and implement international standards requiring States to criminalize, at the very least, child pornography, child prostitution and the sale of children for specified purposes. The working group had one year left in which to conclude drafting the optional protocol by the tenth anniversary of the entry into force of the Convention on the Rights of the Child. The group noted the progress made at the fifth session, and the spirit of cooperation and compromise that had prevailed, particularly during the "informal informals". The above-mentioned delegations hoped that the same spirit of cooperation and compromise would lead the Chairman, together with all interested parties, to continue the work inter-sessionally so that the participants might together develop the innovative approaches that would lead to a successful outcome next year.

104. The representative of Cuba supported the statement made by the representative of Canada. However, she recalled her delegation's understanding of the notion of sale, that it should refer to whatever means and purposes necessary in order to provide for the full protection of children and to hold informal consultations in Geneva, or even in Cuba as her Government was prepared to host such consultations. Her opinion was shared by the observer for the Syrian Arab Republic. In the same vein, the representative of Uruguay and the observers for Brazil, the Islamic Republic of Iran and Switzerland insisted on the need to hold informal consultations if the protocol was to be adopted by the tenth anniversary of the entry into force of the Convention on the Rights of the Child.

105. The representative of Italy said that he was prepared to cooperate fully with the Chairman to ensure the success of future work and expressed appreciation for the progress achieved under the Chairman's guidance on the final text of the protocol. His delegation was convinced that the final text must meet at least two conditions: it must result in a consistent and well-organized instrument, which did not duplicate existing international instruments or those under discussion in other forums; it must be effective, which meant that it must enable States to act effectively against the scourges with which the protocol dealt. It seemed, however, that the various options provided for in the proposed definitions could not be evaluated independently of the solutions to be found for the other chapters and the text as a whole. His delegation would state its final position concerning the text as a whole and each of its articles in the light of those considerations.

106. With regard to the holding of informal consultations, the observer for the Netherlands said that the working group and the Chairman should be mandated to do so by the Commission on Human Rights.

107. The Chairman noted that there was clear progress. However, the consensus was fragile. The fate of the optional protocol would depend on the political will of the international community. In order to be in a position to adopt a protocol by the year 2000, as recommended by the Commission and in line with the hope expressed by many delegations, he will have to conduct informal consultations at the international and even bilateral level. In that regard, he suggested that informal consultations should be held during the forthcoming session of the Commission on Human Rights in order to organize the future formal meeting and informal activities of the working group. He also suggested that informal consultations should be held in November or December 1999, as well as in the week prior to the next session of the working group. The aim was to conclude the work of the working group at its next session (January 2000) and for the protocol to be adopted by the tenth anniversary of the entry into force of the Convention on the Rights of the Child. His proposals for the holding of informal consultations would have to be considered and decided upon by the Commission at its forthcoming session. The Chairman informed the working group of his meeting with the High Commissioner for Human Rights, who had reaffirmed her support for the work of the group. The Chairman also reiterated the need for the Special Rapporteur on the sale of children, child prostitution and child pornography, the members of the Committee on the Rights of the Child and NGOs to participate in the next sessions (formal and informal) of the working group.

Annex I

DEFINITIONS; PENALIZATION AND PROTECTION OF CHILDREN

The contents reflected under the chapter on Definitions and the Penalization and prosecution section under chapter II: Penalization and protection of children are open to future amendments and any other proposals.

CHAPTER I. DEFINITIONS

Sale of children

Sale of children means any act or transaction whereby a child [or any part of the body of a child] is transferred illicitly by any person to another for remuneration [with a view to the [sexual] exploitation of the child] [for any purpose or in any form].

Child prostitution

Child prostitution means offering, obtaining or procuring the use of a child for sexual activities for remuneration or any other form of consideration.

Child pornography

Child pornography means any representation of a [n actual] child engaged in [real or simulated] explicit sexual activities [or any representation of the body or part of the body of a child, the dominant characteristic of which is depiction for sexual gratification].

CHAPTER II. PENALIZATION AND PROTECTION OF CHILDREN

Penalization and prosecution

1. Each State Party shall ensure that the following are offences under its criminal law and punishable by appropriate penalties in accordance with their degree of gravity, whether these offences are committed domestically or internationally, or on an individual or organized basis:

(a) In relation to sale of children:

Offering, delivering or accepting a child [or any part of the body of a child], as well as the facilitation of such acts (see definition, chapter I).

(b) In relation to child prostitution:

Offering, obtaining, procuring or intentionally facilitating, by whatever means, including through coercion or inducement, the use of a child for child prostitution (see definition, chapter I);

(c) In relation to child pornography:

Producing, distributing [or possessing] [or possessing for the purpose of distribution] child pornography (see definition, chapter I).

2. Each State Party shall also ensure that attempts to commit, and the participation in, any of these offences are prohibited.

3. States Parties shall take appropriate measures aimed at effectively prohibiting [and sanctioning] the production, and dissemination by any means, of material promoting or advertising the practices prohibited by the present protocol.

Annex II

DRAFT OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

Part 1: Texts resulting from the debates held by the working group at its fifth session

CHAPTER II. PENALIZATION AND PROTECTION OF CHILDREN

Extradition

4. The offences referred to in article ... shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties, and shall be included as extraditable in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in these treaties.

If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this protocol as a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.

States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with paragraph 2.

Paragraph left for consideration at the next session of the working group

5. If an extradition request is made with respect to an offence described in the first chapter and if the requested State does not or will not extradite [its nationals] the requested State [of the national] shall take suitable measures to submit the case to its authorities with a view to determining whether sufficient grounds exist to prosecute [taking into account the double criminality rule].

Mutual legal assistance (article 10 of the International Convention for the Suppression of Terrorist Bombings)

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article .., including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Seizure and confiscation

6. Consistent with due process and applicable national laws, States Parties shall take appropriate measures to provide for the seizure for purposes of investigation and prosecution, and confiscation after conviction of:

(a) Goods such as materials, assets and other instrumentalities used to commit or facilitate offences under the present protocol;

(b) Proceeds derived from such offences.

[7. In accordance with the provisions of its national law, the State Party takes measures aimed at closing on a temporary or definitive basis premises used to commit such offences.]

Protection of children

2. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present protocol at all stages of the criminal justice process, in particular by:

(a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;

(b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;

(c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected;

(d) Providing proper assistance to child victims throughout the legal process;

(e) Protecting the privacy and identity of child victims [and taking measures in accordance with national law to avoid the dissemination of information that could lead to the identification of child victims];

(f) Providing for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to child victims.

3. These measures shall not be prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

4. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.

6. States Parties shall adopt measures in order to protect the safety and integrity of those persons and/or institutions involved in the prevention and/or protection and rehabilitation of child victims of the practices prohibited under the present protocol.

Part 2: Texts left from previous sessions for consideration by the working group at its next session

PREAMBLE

Proposal submitted by the delegation of the United States of America acting as coordinator

Emphasizing the importance of preventing and eradicating the sale of children, child pornography and child prostitution through effective national legislation and domestic measures, including measures aimed at minimizing access to and dissemination of materials promoting the sale of children, child pornography and child prostitution, through written, visual, or modern telecommunication and electronic media,

Stressing the continuing need for effective implementation by States of relevant international legal instruments relating to the sale of children, child prostitution and child pornography, including the Convention on the Rights of the Child and all other relevant treaties and conventions to which they are party,

Giving due regard to the implementation of the provisions of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography and the other relevant decisions and recommendations of pertinent international bodies,

Encouraging appropriate activities of, and cooperation with, relevant international and non-governmental organizations, with respect to the sale of children, child pornography and child prostitution, in line with their respective national legislation,

Recalling that in the Convention on the Rights of the Child, States Parties undertook to protect the child from all forms of sexual exploitation and sexual abuse,

Bearing in mind that the majority of the child victims in the sale of children, child prostitution and child pornography are from developing countries,

Believing that the elimination of the consumer market will effectively reduce the sale of children, child prostitution and child pornography,

Recognizing that while poverty or underdevelopment create an environment which may lead to child exploitation, the sale of children, child prostitution and child pornography cannot under any circumstances be justified by reason of such poverty or underdevelopment,

Recognizing the need to address the root causes contributing to the vulnerability of the child to sale of children, child prostitution and child pornography, including poverty and underdevelopment,

Deeply concerned at the widespread and continuing practice of sex tourism to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography,

Recognizing the transborder nature of prevailing practices that promote the commercial sexual exploitation of children,

Emphasizing in this regard the importance of establishing effective international cooperation, including bilateral, multilateral and regional arrangements, providing for penalization, prevention, detection, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution and child pornography,

Emphasizing that nothing in this protocol prejudices the legitimate adoption of children consistent with the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption and the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally,

Recognizing that the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

Proposal submitted by Denmark

Keeping in mind that any person regarding whom proceedings are brought in connection with any of the offences referred to above should be guaranteed fair treatment at all stages of the proceedings (article 7, paragraph 3 of the Convention against Torture).

Proposal submitted by Turkey

Recognizing, in conformity with the preamble of the Convention on the Rights of the Child, that this protocol does not prejudice traditional values.

CHAPTER I. DEFINITIONS

The Netherlands proposal on definitions reads as follows:

[Article 1

1. For the purposes of this protocol, States Parties shall define, in their legislation, sale of children, child prostitution, child pornography and [child sex tourism], in accordance with the objectives [of articles 34 and 35] of the Convention on the Rights of the Child and the present protocol.

2. States Parties may in their definitions derogate from the majority age otherwise contained in their legislation.]

CHAPTER II. PENALIZATION AND PROTECTION OF [CHILDREN] [CHILD VICTIMS]

[1 bis. A corporation or any other legal person can be prosecuted consistent with the legal system of a State.]

Consideration will be given to moving the following text to the section of chapter II dealing with protection of children/child victims:

(a) [States parties shall ensure that children who are victims of the practices condemned in the present protocol are not punished for these offences, [subject to the legal system of the State]].

2. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the above-mentioned offences in the following cases:

(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

(b) 1/ When the alleged offender is a national of that State;

(c) When the victim is a national of that State if that State considers it appropriate (article 5.1 of the Convention against Torture).

CHAPTER III. PREVENTION, ASSISTANCE AND COMPENSATION

1. States Parties shall adopt or strengthen, and implement [and publicize] relevant laws, social policies and programmes, [including those addressing the spiritual and moral needs] to prevent the practices condemned in the present protocol. Particular attention shall be given to protect children who are specially vulnerable to these practices [, and to international cooperation whenever required to prevent them].

1/ The Netherlands delegation proposed to insert at the end of that sentence the following wording: "taking into account the double criminality rule where appropriate;". The Norwegian delegation proposed to draft the subparagraph as follows: "(b) Outside the territory, when the alleged offender is a national of that State or a person domiciled in that State;".

2. States Parties shall promote awareness in the public at large, including children, through information [by all means including mass media] and education about the [preventive measures and] harmful effects of the practices condemned in the present protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education programmes, including at the international level.

3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of practices condemned in the present protocol, as well as their full social reintegration, and their full physical and psychological recovery. [These shall [could], inter alia, consist of medical, social [economic] and legal assistance.]

4. States Parties shall ensure that all child victims of the practices condemned in the present protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

CHAPTER IV. INTERNATIONAL COOPERATION AND COORDINATION

Article A

States Parties shall take all necessary steps to strengthen international cooperation by all appropriate means, including bilateral, multilateral and regional arrangements for the prevention, detection, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism.

Article C

States Parties shall promote cooperation between their authorities and [relevant] [national and international non-governmental organizations] and international organizations with a view to the implementation of the purposes of the present protocol.

[Article E

States Parties shall, through bilateral and multilateral cooperation, undertake to take such measures as are deemed effective [in eliminating the consumer market that nurtures] [in order to fight] [the increase in] the sale of children, child prostitution, child pornography [and child sex tourism] [on the basis of the principle of collective responsibility].]

Article F

[States Parties shall ensure the strengthening of international cooperation in order to eliminate the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the practices of sale, prostitution, pornography and child sex tourism.]

Article G

States Parties shall ensure the implementation and strengthening of measures against the practices referred to in the present protocol, including the protection against cross-border trafficking, and providing special arrangements for the assistance, repatriation and reintegration of child victims, when appropriate.

[Article H

States Parties shall ensure international cooperation to assist children especially from developing countries for their repatriation and reintegration, in particular by providing financial aid.]

Proposal submitted by the delegation of Australia acting as a coordinator for the chapter on international cooperation and coordination

Encouraging States Parties to work to ensure cooperation between their appropriate officials in tracing and apprehending and prosecuting those responsible for acts involving the sale of children, child prostitution and child pornography, and in investigating such acts, and to work with relevant non-governmental and international organizations to assist with the identification of offenders, bearing in mind the need to protect the privacy of all involved,

Encouraging States Parties also to take all reasonable steps to put in place effective bilateral, multilateral or regional arrangements for cooperation in the prevention, detection, prosecution and punishment of acts of tourism organized with the purpose of facilitating the effecting of a commercial sexual relationship with a child,

Considering that States Parties should strengthen cooperation in providing assistance, rehabilitation and repatriation where this is appropriate to child victims of sale, prostitution and pornography,

Considering also that States Parties should take all feasible measures, through bilateral and multilateral cooperation and on the basis of collective responsibility, to eliminate the sale of children, child prostitution and child pornography,

Encouraging States Parties to promote and strengthen international cooperation in the elimination of poverty, hunger and underdevelopment, all of which create an environment which may lead to the exploitation of children, particularly in developing countries, with a view to contributing to the elimination of sale of children, child prostitution and child pornography.

CHAPTER V. GENERAL PROVISIONS AND OTHER MATTERS/COMPLEMENTARY CLAUSES

Text proposed by the delegations of the Islamic Republic of Iran and Peru

Application of other legal instruments

1. Nothing in the present protocol shall be construed so as to preclude provisions in the law of a State Party or in international instruments which are more conducive to the realization of the rights of the child.

2. The provisions of the present protocol shall extend to all parts of federal States without any limitations or exceptions.

Reporting

The States parties to the present protocol shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, information on the measures that they have adopted to give effect to the present Protocol.

Reservations

A reservation incompatible with the object and purpose of the present protocol shall not be permitted.

Entry into force

1. The present protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present protocol or acceding to it after its entry into force, the present protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Denunciation

1. Any State Party may denounce the present protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States which have signed the Convention. Denunciation shall take effect one year after the date or receipt of the notification by the Secretary-General of the United Nations.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this protocol in regard to any offence which occurs prior to the date at which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

Deposit and languages

1. The present protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this protocol to all States Parties to the Convention and all States which have signed the Convention.